

Drinking Water Operating Permits

Chapter 246-294 WAC

Effective April 1, 2004

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For more information or additional copies of this publication contact:

Training and Outreach Section
Office of Drinking Water
Department of Health
PO Box 47828
Olympia, WA 98504-7828
(360) 236-3164

Mary Selecky
Secretary of Health

Denise A. Clifford
Director, Office of Drinking Water

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WAC 246-294-001 Purpose.

This chapter implements chapter 70.119A RCW and sets operating permit requirements to help assure Group A water systems provide safe and reliable drinking water to the public consistent with chapter 246-290 WAC, state board of health drinking water regulations and chapter 246-292 WAC, water works operator certification regulations.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-001, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-001, filed 1/14/93, effective 2/14/93.]

WAC 246-294-010 Definitions.

Abbreviations:

EPA – Environmental Protection Agency
MCL – maximum contaminant level
NTNC – nontransient noncommunity
SMA – satellite management agency
SSNC – state significant noncomplier
TNC – transient noncommunity
VOC – volatile organic chemical
WFI – water facilities inventory

"Adequacy" means an assessment, based upon evaluation of the department's records, of a water system's current ability to provide safe and reliable drinking water in accordance with applicable drinking water statutes and regulations.

"Community water system" means any Group A water system:

- With fifteen or more services used by residents for one hundred eighty or more days within a calendar year, regardless of the number of people; or
- Regularly serving twenty-five or more residents for one hundred eighty or more days within the calendar year, regardless of the number of services.

"Department" means the Washington state department of health.

"Drinking water regulations" means the provisions of chapter 70.119A RCW, chapter 246-290 WAC, state board of health drinking water regulations and chapter 246-292 WAC, water works operator certification regulations, that help assure Group A public water systems provide safe and reliable drinking water.

"Group A water systems" are defined as community and noncommunity water systems.

- (a) Community water system means any Group A water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents.
- (b) Noncommunity water system means a Group A water system that is not a community water system. Noncommunity water systems are further defined as:
 - (i) Nontransient (NTNC) water systems that provide service opportunity to twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year.
 - (ii) Transient (TNC) water systems that serve:
 - (A) Twenty-five or more different people each day for sixty or more days within a calendar year;
 - (B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days in a calendar year; or
 - (C) One thousand or more people for two or more consecutive days within a calendar year.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 3.

"Nonresident" means a person having access to drinking water from a public water system who lives elsewhere. Examples include travelers, transients, employees, students, etc.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that holds as property, a public water system.

"Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. The term includes:

- (a) Collection, treatment, storage, and/or distribution facilities under control of the purveyor and used primarily in connection with the system.
- (b) Collection or pretreatment storage facilities not under control of the purveyor, but primarily used in connection with the system.

"Resident" means an individual living in a dwelling unit served by a public water system.

"Satellite management agency (SMA)" means an individual, purveyor, or entity that is approved by the department in accordance with chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems.

"Service connection" means a connection to a public water system designed to provide potable water to a single-family residence, or other residential or nonresidential population. When the connection provides water to a residential population without clearly defined single-family residences, the following formulas shall be used in determining the number of services to be included as residential connections on the WFI form:

- Divide the average population served each day by two and one-half; or
- Using actual water use data, calculate the total ERU's represented by the service connection in accordance with department design guidance.
- In no case shall the calculated number of services be less than one.

"State significant noncomplier (SSNC)" means a system that is violating or has violated department rules, and violations may create, or have created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeat violations of monitoring requirements, failure to address exceedance of permissible levels of regulated contaminants, failure to comply with treatment technique standards or requirements, failure to comply with water works operator certification requirements, or failure to submit to a sanitary survey.

"Water facilities inventory (WFI)" means the department form summarizing each public water system's characteristics.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-010, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-010, filed 1/14/93, effective 2/14/93.]

WAC 246-294-020 Applicability.

Owners of all Group A water systems shall obtain an annual operating permit from the department for each system owned. The operating permit shall be valid until the next renewal date in accordance with WAC 246-294-050. Any change in ownership of the permitted system shall require a new permit in accordance with WAC 246-294-060.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-020, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-020, filed 1/14/93, effective 2/14/93.]

WAC 246-294-030 Application and issuance of operating permits.

- (1) No person may operate and no owner shall permit the operation of a Group A water system unless the owner annually submits an application along with the required fee to the department and the department has issued an operating permit to the system owner. Any owner operating a system may continue to operate until the department takes final action on granting or denying the operating permit, in accordance with WAC 246-294-050.
- (2) The department shall mail an application to water systems annually using a schedule that is based on the size and type of water system.
- (3) In addition to the regularly scheduled issuance of annual operating permits, new or revised operating permits shall be required when:
 - (a) The owner of a new Group A system receives all required department approvals relating to water system operation (see WAC 246-294-030(4)); or
 - (b) Ownership of a Group A system changes (see WAC 246-294-060).
- (4) The department may also issue a revised operating permit when there is a change in a systems compliance that necessitates a change to a different permit category.
- (5) New Group A systems shall be sent operating permit applications at the time construction documents are submitted to the department for approval. The deadline for submitting the completed application and full payment to the department shall be the same date as:
 - (a) The *Construction Completion Report* required by WAC 246-290-120(5); or
 - (b) The existing system as-built approval required by WAC 246-290-140.
- (6) Initial and renewal applications shall be based on information from the most recent WFIs on file with the department, and sent to owners on an annual basis. In the case of a SMA, the department will send a complete list of systems owned, along with the corresponding system identification numbers. The SMA shall verify the information, make corrections or additions and then return the list with the application.
- (7) Upon receipt of the application, the owner or other legally authorized person shall:
 - (a) Complete portions of the form which need completing;
 - (b) Ensure that information on the form is accurate;
 - (c) Sign the form; and

- (d) Return the application to the department within seventy days of the department's mailing date, accompanied by the applicable fee.
- (8) The applicable fee shall be in the form of a check or money order made payable to the "Department of Health" or successor organization as designated by the department and mailed in accordance with the directions on the application.
- (9) Systems which do not return operating permit applications along with the required fee by the deadline specified on the notice shall:
 - (a) Not be issued an operating permit; and
 - (b) Be subject to the enforcement provisions in WAC 246-294-090.
- (10) An additional charge of ten percent or twenty-five dollars, whichever is greater, shall be added to the applicable fee listed in WAC 246-294-070 if the owner fails to return the completed application with applicable fee to the department within seventy days of the department's mailing date.
- (11) The department shall review each submitted application. Any changes made on the application by the applicant shall be evaluated by the department and may result in an update of the system's WFI form, which would be reflected on the next renewal application.
- (12) If after issuing an operating permit, the department determines that the permit holder has made false statements, the department may, in addition to taking other actions provided by law, revise both current and previously granted permit fee determinations and charge the owner accordingly.
- (13) If the department discovers that an owner has been operating a system without an operating permit and such system is covered by the requirements of this chapter, the department may charge the owner an operating permit fee plus permit fees owed for each year, including late fees, since the effective date of this chapter.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-030, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-030, filed 1/14/93, effective 2/14/93.]

WAC 246-294-040 Operating permit categories.

- (1) The department shall evaluate and place each system into one of the categories in subsection (2) of this section. Each permit shall clearly identify the category into which the system is placed.
- (2) The department will use the criteria from drinking water regulations to evaluate systems and place them into the following operating permit categories:
 - (a) Category green. This category represents systems that are in substantial compliance with drinking water regulations. The department considers systems in this category as

adequate for existing uses and adding new service connections up to the number of approved service connections.

(b) Category yellow. This category represents systems that are substantially in compliance with drinking water regulations, except that the system:

- (i) Has been notified of the water system planning provisions of WAC 246-290-100 and has failed to satisfy the requirements; and/or
- (ii) Is a state significant noncomplier that has signed a compliance agreement with the department to resolve the violations and is acting in accordance with the compliance agreement.

The department considers systems in the yellow category as adequate for existing uses and new service connections up to the number of approved service connections unless otherwise limited by a compliance agreement.

(c) Category blue. This category represents systems that are substantially in compliance with drinking water regulations except that the system:

- (i) Does not meet the design approval requirements of WAC 246-290-120 and 246-290-140; or
- (ii) Has exceeded the number of department approved service connections.

The department considers systems in this category as adequate for existing uses but are not considered adequate for adding new service connections.

(d) Category red. This category represents systems that are substantially out of compliance with drinking water regulations. The department will place a system in this category if it is:

- (i) A state significant noncomplier and has not signed a compliance agreement with the department or has signed a compliance agreement but is not acting in accordance with the compliance agreement; or
- (ii) In violation of a departmental order; or
- (iii) Under a departmental order for violations that pose an imminent threat to public health.

The department considers systems in this category inadequate for existing uses and for additional service connections.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-040, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-040, filed 1/14/93, effective 2/14/93.]

WAC 246-294-050 Permit issuance.

- (1) The department shall grant or deny the operating permit within one hundred twenty days of receiving a completed application and full payment.
- (2) Issuance of an operating permit means that the owner may operate the permitted system until the date specified on the permit unless protection of the public health, safety, and welfare requires immediate response or the imposition of conditions.
- (3) At the time of permit issuance, the department may impose permit conditions and compliance schedules that the department determines are necessary to ensure that the system will provide safe and reliable drinking water, consistent with the provisions of chapters 246-290 and 246-292 WAC.
- (4) The department may modify an operating permit at any time based on review of the evaluation criteria in WAC 246-294-040(2). If the department modifies a permit, the department will send the owner a revised permit with the same expiration date. The department will also notify the appropriate local jurisdiction of the change in status.
- (5) The department may revoke an operating permit or deny an operating permit application if the department determines that the system operation constitutes or may constitute a public health hazard to consumers.
- (6) When the department takes action to deny, condition, modify, or revoke an operating permit, the department shall follow the steps outlined in RCW 43.70.115.
- (7) An operating permit applicant may file an appeal under chapter 34.05 RCW, if the department denies, conditions, modifies, or revokes the operating permit. To appeal a department action, the owner shall submit to the department a written appeal within twenty-eight days of receiving the adverse notice.

The appeal shall state:

- (a) The issue or issues and law involved; and
 - (b) The basis for appealing the department's decision.
- (8) Any owner that requests a hearing under chapter 34.05 RCW may continue to operate the system until the department issues a final departmental decision, unless the department determines protection of the public health, safety, and welfare requires summary action.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-050, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-050, filed 1/14/93, effective 2/14/93.]

WAC 246-294-060 Transfer of ownership.

- (1) A prospective new owner of a Group A water system may not take possession of the system without first obtaining a new operating permit.
- (2) The department shall send an application to the prospective new owner when the department is notified of transfer of ownership in accordance with WAC 246-290-035(2). The new owner shall proceed with the permit process under WAC 246-294-030.
- (3) The department shall not charge a fee for a new permit resulting from a change in ownership. The permit shall be effective from the date of issuance by the department until the next scheduled permit renewal date, at which time the department will charge a renewal fee.
- (4) This section applies to the prospective owner, and the requirements of WAC 246-290-035(2) apply to the owner transferring the system.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-060, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-060, filed 1/14/93, effective 2/14/93.]

WAC 246-294-070 Fees.

- (1) The fees for Group A water system operating permits are authorized under RCW 70.119A.110 and are listed in Table 2.

Table 2
Operating Permit Fees

Classification	Fee
0 - 14 services	None
15 - 49 services	\$25.00 per year
50 - 3,333 services	\$1.50 per service per year
3,334 - 53,333 services	\$4,999.50 + .10 per service over 3,333 services per year
53,334 or more services	\$10,000.00 per year
Satellite Management Agency (based on total services in all systems owned by SMA)	\$1.00 per service per year or the fee from the appropriate category above, whichever is less
Late charge	Additional 10% of applicable charge stated above or \$25.00, whichever is greater

- (2) If systems serve both resident and nonresident populations, the department shall determine the permit fee category by adding the number of services and an equivalent for the NTNC and TNC nonresident population served as calculated in subsection (3) of this section.

- (3) For NTNC and TNC systems, owners shall pay the fee in Table 2 based on equivalent number of services. Population information used in calculating equivalent number of services shall come from the WFI. The department shall use the following formulas to determine equivalent number of services:
 - (a) For NTNC population, divide the average population served each day by two and one-half; and
 - (b) For TNC population, divide the average population served each day by twenty-five.
- (4) Any county or SMA assuming ownership of a Group A water system, or court appointed receiver of a Group A water system is exempt from the operating permit fee for one year after the next renewal date.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-070, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-070, filed 1/14/93, effective 2/14/93.]

WAC 246-294-080 Public notification.

An owner issued a category red operating permit shall notify the water system users in accordance with WAC 246-290-71001, 246-290-71003, and 246-290-71004.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-080, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-080, filed 1/14/93, effective 2/14/93.]

WAC 246-294-090 Enforcement.

The department may initiate appropriate enforcement actions if an owner is out of compliance with these rules or any applicable drinking water regulations. These actions may include any one or combination of the following:

- (1) Issuance of informal letters instructing or requiring appropriate corrective measures; or
- (2) Issuance of a compliance agreement or schedule; or
- (3) Issuance of departmental orders requiring any person to apply for an operating permit as required by these rules and RCW 70.119A.110 or to comply with applicable drinking water regulations imposed as part of an operating permit; or
- (4) Issuance of civil penalties for up to five thousand dollars per day per violation for failure to comply with departmental orders issued in accordance with subsection (3) of this section; or
- (5) Legal action by the attorney general or local prosecutor.

[Statutory Authority: Chapter 70.119A RCW. 04-06-047, § 246-294-090, filed 3/1/04, effective 4/1/04; 93-03-047 (Order 325), § 246-294-090, filed 1/14/93, effective 2/14/93.]

WAC 246-294-100 Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: Chapter 70.119A RCW. 93-03-047 (Order 325), § 246-294-100, filed 1/14/93, effective 2/14/93.]